

THE HON'BLE SRI JUSTICE N.TUKARAMJI

M.A.C.M.A.No. 2742 OF 2006

JUDGMENT:

The second respondent/insurer (hereinafter 'the respondent') filed this appeal disputing the liability and quantum of compensation granted in the decree and award dated 27.07.2006 in O.P.No.352 of 2005 on the file of Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge, (III-F.T.C.), Warangal at Mahabubabad.

2. The brief facts of the case are that on 29.06.2004 while the L. Ramulu/injured was proceeding on his cycle towards Ameenabad and near Ameenpet Rice Mill a tractor and trailer bearing registration No.AP-36-U-2901/2902 (hereinafter 'the tractor') driven in rash and negligent manner came in opposite direction and struck the cycle. As a result he slumped and received grievous injuries all over his body. After the treatment, claiming medical expenditure, loss of earnings and disability filed petition for compensation of Rs.5,00,000/-.

3. The Tribunal on considering the evidence held that the accident occurred due to the rash and negligent driving of the tractor and on evaluation arrived at Rs.4,99,200/- towards compensation for 100% disability (including present and future loss of earnings), Rs.50,000/-

towards medical expenditure, Rs.50,000/- for extra-nourishment, and Rs.50,000/- for pain and suffering, Rs.1,00,000/- towards attendant charges and Rs.2,000/- for transportation in total Rs.7,01,200/-. However, restricted the quantum to Rs.5,00,000/- as claimed in the petition with 7.5% interest per annum from the date of petition, till the date of realization and held the owner and insurer of the tractor/first and second respondents are liable to pay the compensation.

4. In appeal, the Appellant /2nd respondent (hereinafter 'the respondent') contended that the tribunal ought to have considered the delay of 5 days in filing F.I.R and the possibility of planting the crime vehicle in the case for compensation. Further should have fixed the wage at Rs.1352/- as specified in G.O.Ms.No.48 under Minimum Wages Act or basing on minimum wages fixed for the agriculture labour in Nekkonda mandal of Warangal district. In addition, the tribunal should have taken into account the fact that the injury was complicated due to the negligence of injured, as such the percentage of disability should have been lowered in computing compensation. Thus, prayed for re-considering the liability and quantum.

5. The petitioner pleaded that the injuries suffered in the accident made his life miserable and he is unable to attend any normal **chores** of life without assistance and the awarded compensation amount is in no way meeting the requirements. That apart, though the tribunal arrived at more compensation than claimed, erroneously restricted the same to Rs.5,00,000/-. Having regard to this position, prayed for reconsideration and to award just compensation.

6. In these rival pleadings, the points arises for the determination are:

(a) Whether the respondent/insurer could make out any tenable ground to absolve its liability?

(b) Whether the compensation amount awarded to the petitioner is just and proper?

7. On the aspect of liability, the appellant contested that the delay in filing police report/F.I.R, is indicating the possibility of false implication of the crime tractor. To prove the false implication of the vehicle except relying on the five days delay in lodging the police report the respondent has not placed any material much less tenable evidence for consideration. At any stretch, mere delay in lodging police report

cannot be a conclusive proof of false implication. Thus this claim is found to be stale.

8. In regard to the compensation, in the accident, the PW-1 had suffered fracture to T-12 Vertebra spinal column and other injuries all over the body. The evidence of Neuro Surgeon of the Rohini Hospitals/PW-2 and the injury certificate/Ex.A2 are disclosing that the petitioner had suffered spinal injury burst fracture of T-12 Vertebral body with paraplegia (complete paralysis of both lower limbs). The Assistant Civil Surgeon, M.G.M.Hospital/PW-3 also stated that the petitioner suffered said injury. The Discharge card/Ex.A-6 and case sheet Ex.X-1 and Ex.X-2 of M.G.M and Rohini Hospitals are substantiating the medical treatment. The treating doctor/PW-2 explained that the injury is grievous in nature and the petitioner had total paralysis of both lower limbs, numbness of lower half of the body without urinary retention and feeble in continence at the time of discharge. The doctor/PW-3 Member of Medical Board deposed that the petitioner was examined and assessed the disability at 90% due to paraplegia which is permanent in nature and due to the disability the patient cannot walk, sit, stand and even cannot attend nature calls as he

is totally bed ridden and the patient requires two attendants for his daily activities. These aspects are not specifically disputed by the respondents.

9. However, the respondent is contesting that, when the doctor/PW-2 advised for surgery to fix the spine, as it is referred, the petitioner had contributed to building up of the gravity of injury, therefore the disability shall be fixed on lower side. This plea is found not acceptable for the reasons, firstly, the doctor/PW-2 in cross examination denied the suggestion that if the petitioner was timely operated there was possibility of curing the injury. Secondly, the situation of medical treatment arose only due to the injuries caused in the accident and the choice of patient not to go for surgery cannot be considered as contribution and thirdly, law does not mandate only a particular mode of medical treatment.

10. The petitioner deposed that he spent more than Rs.50,000/- for the treatment. The tribunal considering the nature of injuries, period of treatment granted **Rs.50,000/-** towards medical expenditure and extra-nourishment. As this finding is rational, the same is affirmed.

11. The doctors/PW-2 and PW-3 were consistent in the opinion that the injuries and its effects are permanent in nature and requires certain facilities like water bed to prevent bed sores and even an attendant. Having regard to these aspects, possibility of future medical necessities granting **Rs.1,00,000/-** is found to be proper and accordingly this amount is awarded under the head of future medical expenses.

12. The medical evidence is disclosing that the petitioner had suffered paraplegia and cannot move out of bed; Thus the petitioner would not be capable of doing any activity much less income earning avocation and has to lead vegetative life, as such rating the disability at 100% is justified.

13. The petitioner pleaded the occupation of labour and monthly earnings at Rs.3,000/-. The occupation being part of un-organized sector, no documentary evidence can be expected. In absence of any materials, the tribunal relied on the Minimum Wages prescribed for the labourers. In the appeal, the respondent referred to the Government order (G.O) Ms.No.48 and asserted for application of minimum wages prescribed therein. To note, the minimum wages prescribed in the G.O is only a directive that, less than the wage stipulated there in shall not

be paid for particular occupational activity and it cannot be read that no wage earner shall be paid more than the recommended sum in the G.O. Having regard to this position and the occupation of labour and the claim of monthly earning at Rs.3,000/- is found fair and acceptable. Further in absence of any other material, basing on the claim of the petitioner and the entries in the injury certificate/Ex.A2 the petitioner age can be believed at 20 years by the relevant date.

14. The Hon'ble Supreme Court in *United India Insurance Company Limited Vs. Pappu Deo Yadav*¹ held that while assessing the compensation for injuries, the future prospects shall also be taken into account. As the petitioner falls in the category of self employed, 40% of the income added towards future prospects.

15. Thus the annual income of the petitioner would be Rs.50,400/- if this amount is multiplied with the relevant multiplier to the age of the petitioner i.e., 18, the total sum comes to **Rs.9,07,200/-**. The petitioner is entitled for this amount towards loss of income due to disability.

¹ 2018 SCC OnLine Del 11348

16. The medical evidence is clarifying that the petitioner is suffering paralysis of half of the body which continues throughout and has to suffer the pain rest of his life. In addition, the doctor/PW-3 categorically stated that the petitioner will not be able to attend even nature calls by himself and for all other daily activities, he requires support of some attendants althrough. Considering these aspects allowing Rs.3,00,000/- towards pain and sufferings and Rs.2,00,000/- for attendant charges is found proper.

17. To attend the medical treatment for rest of life, the petitioner requires assistance of transport services to attend medical requirements. Thus, to meet the situation granting a lump sum amount of Rs.50,000/- is found appropriate.

18. Therefore, the petitioner is eligible for the following amounts:

Sl. No.	Description	Amount (Rs.)
1.	Medical expenditure and Extra-nourishment	50,000.00
2.	Future medical expenditure	1,00,000.00
3.	Loss of income due to disability	9,07,200.00
4.	Transportation charges	50,000.00
5.	Attendant charges	2,00,000.00
6.	Pain and suffering	3,00,000.00
	Total:	16,07,200.00

19. Section 168 of the Motor Vehicles Act casts statutory duty on the Tribunal and the Appellate Court to award just and reasonable compensation. Further the enabling provision Order 41 Rule 33 of C.P.C. empowers the appellate Court to pass or make such further order/decreed as the case may be required.

In this context, it is proper to note the authority of the Hon'ble Supreme Court between Jitendra Khimshankar Trivedi and others v. Kasam Daud Kumbhar and others². In para No.13, held as under:

“The tribunal has awarded Rs.2,24,000/- as against the same, claimants have not filed any appeal. As against the award passed by the tribunal when the claimants have not filed any appeal, the question arises whether the income of the deceased could be increased and compensation could be enhanced. In terms of Section 168 of the Motor Vehicles Act, the courts/tribunals are to pass awards determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. The power of the courts in awarding reasonable compensation was emphasized by this Court in Nagappa vs. Gurudayal Singh & Ors.[3], Oriental Insurance Company Ltd. vs. Mohd. Nasir & Anr.[4], and Ningamma & Anr. vs. United India Insurance Company Ltd.[5]. As against the award passed by the tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of courts/tribunals to

¹ (2015) 4 SCC 237

award just and reasonable compensation, it is appropriate to increase the compensation.”

This view is bolstered in Surekha and others v. Santosh and others³. In this authority, the Hon’ble Supreme Court while considering the aspect that though the Hon’ble High Court concluded the entitlement of the claimants for more compensation than claimed, declined to grant the same on the ground of not filing cross appeal, held thus:

“By now, it is well settled that in the matter of insurance claim compensation is reference to the motor accidents, the court should not take hyper-technical approach and ensure that just compensation is awarded to the affected person or the claimants” and awarded the just compensation, to the claimants.

The prescriptions of the above authorities are explicating that higher compensation than the claimed can be awarded, without there being any cross appeal or objection, owing to the statutory duty of awarding the just compensation. In effect, the just compensation arrived in the preceding discussion shall be granted to the respondent/claim petitioner.

² 2020 ACJ 2156

20. The appeal is disposed of in the following terms viz.,

- (i) The appeal filed by the appellant/2nd Respondent /Insurer is dismissed. However, the 1st Respondent/ claim petitioner is granted Rs.16,07,200/- (Rupees Sixteen lakhs seven thousand two hundred only) with interest @ 7.5% per annum from the date of petition till the date of realization with costs;
- (ii) the 1st and 2nd respondents/owner and insurer of the Auto are jointly and severally held liable to pay compensation and they are directed to deposit the awarded amount within one month from the date of receipt of a copy of this judgment; and
- (iii) on such deposit, the petitioner is permitted to withdraw the entire amount.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

N.TUKARAMJI, J

Date:07.11.2022.
VRKS

THE HON'BLE SRI JUSTICE N.TUKARAMJI

M.A.C.M.A.No. 2742 OF 2006

**Date:07.11.2022.
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